

EXHIBIT 10

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 ANNE HEITING, an individual,
13

14 Plaintiff,

15 vs.

16 VITAMIN SHOPPE INDUSTRIES, LLC,
a New Jersey Corporation; and DOES 1
through 25, inclusive,
17

18 Defendants.
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Case No.: 23STCV16758

**FIRST AMENDED COMPLAINT
FOR:**

- 1. VIOLATIONS OF CIPA (THE
CIPA CALIFORNIA INVASION
OF PRIVACY ACT (CAL.
PENAL CODE § 631))**

JURISDICTION

1
2 1. Subject matter jurisdiction is proper in this Court because the amount in
3 controversy is within this Court's jurisdictional limit.

4 2. This Court has personal jurisdiction over Defendant because, on information and
5 belief, Defendant conducts a substantial amount of business in Los Angeles County, California.

6 3. Venue is proper in the Los Angeles County Superior Court pursuant to Code of
7 Civil Procedure, §§ 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
8 County. Defendant conducted and continues to conduct business in this County as it relates to its
9 illegal wiretapping. Additionally, Defendant has sufficient minimum contacts in the State of
10 California or otherwise purposefully avails itself of the California market.

PARTIES

11
12 4. Plaintiff Anne Heiting ("Plaintiff") is a citizen of California.

13 5. Defendant Vitamin Shoppe Industries, LLC ("Defendant" or "Vitamin Shoppe") is
14 a New Jersey corporation that owns, operates, and/or controls vitaminshoppe.com, the website
15 referenced in the allegations below.

16 6. The above-named Defendant, along with its affiliates and agents, are collectively
17 referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE
18 DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues
19 such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally
20 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
21 Complaint to reflect the true names and capacities of the DOE Defendants when such identities
22 become known.

23 7. Plaintiff is informed and believes that at all relevant times, every Defendant was
24 acting as an agent and/or employee of each of the other Defendants and was acting within the
25 course and scope of said agency and/or employment with the full knowledge and consent of each
26 of the other Defendants, and that each of the acts and/or omissions complained of herein was
27 ratified by each of the other Defendants.

FACTUAL ALLEGATIONS

8. Vitamin Shoppe Industries, LLC is the proprietor of vitaminshoppe.com, an online platform that sells a variety of vitamins, supplements and health products. During a browsing session on the Defendant's website, the plaintiff utilized the chat box feature. However, the plaintiff was not informed that her conversations were being recorded and exploited for commercial surveillance purposes without her consent. Defendant's deceptive and invasive practices violate the privacy rights of its customers.

9. In the context of Vitamin Shoppe's website, a code is implanted which embeds content from another website (in this case, BoldChat) within a web page. However, this code intercepts the inquiries that consumers believe are being sent directly to Vitamin Shoppe and diverts them to boldchat.com.

```
<style type="text/css">...</style>
<link rel="canonical" href="https://www.vitaminshoppe.com/b/winged/natural-beauty-skin/beauty-skin-care" id="canonicalUrl">
<script src="https://vmss.boldchat.com/aid/447188981064267967/bc.vms4/vms.js" async defer></script>
<style type="text/css" class="ju_CSSJS_default">
.ju_Con{text-align:left;z-index:99999998;top:0px;left:0px;display:none;font-family:Arial, Helvetica, sans-serif;width:100%;position:absolute;position:fixed;
center center; background-repeat: no-repeat; background-size: cover;}.ju_overlay:before {content: '';height: 100%;display: inline-block;vertical-align: midd
</style>
<script id="bcvm_script_1689604829251" async type="text/javascript" src="https://ci.boldchat.com/aid/447188981064267967/bc.inv/ci.js?resize=t_D95CBDC87157BAB7
<style type="text/css">...</style>
</head>
```

10. Once boldchat.com gains access to the user's information, it stores it for its own purposes. Vitamin Shoppe fails to inform its website users that their communications are being monitored and stored using an "event listener" as seen below.

```
return false;
}
switch (F.event) {
case "onclick":
F.ref.addEventListener("click", function(G) {
C(F.id, G)
});
return true;
case "value":
case "onchange":
F.ref.addEventListener("change", function(G) {
o(F.id, G)
});
});
```

1 11. BoldChat also shares the data it collects and stores with Vitamin Shoppe who adds
2 the data to the existing profiles it has surreptitiously collected from its users. According to its own
3 stated disclosures, Vitamin Shoppe collects a wide range of personal information from website
4 users and consumers, including personal identifiers, unique device identifiers, and may deduce
5 additional demographic details like gender; transaction details; precise location details, including
6 IP addresses; GPS addresses, various details about website usage, such as links clicked, page
7 views, searches, time spent, social media interactions, and interactions with others; inferences, and
8 other information.

9 12. Visitors would be shocked and appalled to know that Defendant secretly records
10 those conversations and pays third parties to eavesdrop on them in real time to be “targets” for
11 non descript mercantile campaigns. Defendant should not be permitted to acquire such extensive
12 personal information from unsuspecting consumers who visit their website merely to make a
13 purchase, such as ordering protein powder. This blatant disregard for consumer privacy is
14 unacceptable and warrants appropriate scrutiny and intervention.

15 13. Within the past year, Plaintiff (a statutory tester) used the chat box feature on
16 Vitamin Shoppe’s site, however, Defendant did not inform Plaintiff that Defendant was not
17 communicating with Vitamin Shoppe at all when chatting online on the vitaminshoppe.com
18 website. Vitamin Shoppe does not disclose its relationship at all to BoldChat, or that Vitamin
19 Shoppe is aiding, abetting, and paying third parties like BoldChat which is recording and
20 commoditizing their communications using the seemingly harmless chat box feature. A feature
21 which, because it is seemingly innocuous and appears to occur on Vitamin Shoppe’s website,
22 would never give rise to the suspicion that it is really a means to collect data and subvert privacy
23 rights.

24 14. Defendant did not obtain Plaintiff’s express or implied consent to wiretap or allow
25 third parties to eavesdrop on visitor conversations, nor did Plaintiff know at the time of the
26 conversations that Defendant was secretly wiretapping them and allowing third parties to
27 eavesdrop on them.

FIRST CAUSE OF ACTION

Violations of the California Invasion of Privacy Act

Cal. Penal Code § 631(a)

15. Section 631(a) of California’s Penal Code imposes liability upon any entity that “by means of any machine, instrument, contrivance, or in any other manner,”

(1) “intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system,” or

(2) “willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state” or (3) “uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section.” Here, Defendant does all three.

16. Section 631 of the California Penal Code applies to internet communications and thus applies to Plaintiff’s electronic communications with Defendant’s Website.

17. The software embedded on Defendant’s Website to record and eavesdrop upon the Plaintiff’s communications qualifies as a “machine, instrument, contrivance, or ... other manner” used to engage in the prohibited conduct alleged herein.

18. At all relevant times, Defendant aided, abetted, and even paid third parties to eavesdrop upon such conversations.

19. Plaintiff did not expressly or impliedly consent to any of Defendant’s actions.

20. Defendant’s conduct constitutes numerous independent and discreet violations of Cal. Penal Code § 631(a), entitling Plaintiff to injunctive relief and statutory damages.

PRAYER

WHEREFORE, Plaintiff prays for the following relief against Defendant:

1. An order enjoining Defendant's conduct as alleged herein and any other injunctive relief that the Court finds proper;
2. Statutory damages pursuant to CIPA;
3. Compensatory damages under CUCA;
4. Punitive damages under CUCA;
5. Reasonable attorneys' fees and costs under CUCA; and
6. All other relief that would be just and proper as a matter of law or equity, as determined by the Court.

DATED: September 11, 2023

TAULER SMITH LLP

By: /s/ Robert Tauler
Robert Tauler, Esq.
Attorney for Plaintiff
Anne Heiting

DEMAND FOR JURY TRIAL

Plaintiff Anne Heiting hereby demands a trial by jury.

DATED: September 11, 2023

TAULER SMITH LLP

By: /s/ Robert Tauler
Robert Tauler, Esq.
Attorney for Plaintiff
Anne Heiting

PROOF OF SERVICE


Re: *Anne Heiting v. Vitamin Shoppe Industries, LLC*
Case No. 23STCV16758

I, Luca Stein not a party to the within action, hereby declare that on September 11, 2023, I served the attached **PLAINTIFF'S FIRST AMENDED COMPLAINT** on the parties in the within action by USPS First-Class Mail and electronic mail on the following parties.

Andrea Maddox
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Attorney for Defendant
Vitamin Shoppe Industries, LLC

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, California on September 11, 2023.



Luca Stein

Assistant to Robert Tauler
Attorney for Plaintiff
Anne Heiting